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C O N F I D E N T I A L SECTION 01 OF 04 ANKARA 000587

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SUBJECT: TURKEY: INDICTMENT IN AKP CLOSURE SUIT - THE CASE
FOR THE ROAD TO SHARIA

REF: ANKARA 578 AND PREVIOUS

Classified By: PolCouns Janice G Weiner, reasons 1.4 (b),(d)

¶1. (C) Summary: The 162-page indictment that Court of Appeals Chief Prosecutor Yalcinkaya submitted to the Constitutional Court, asking that the ruling Justice and Development Party (AKP) be closed as a center of anti-secular activity, is a typical Turkish indictment - high in accusations, low in concrete evidence. The bar for indictments in Turkey is relatively low. A prosecutor need only show that plausible evidence exists on which a case can be based.

¶2. (C) The indictment devotes substantial effort to placing the case within the framework of European and international law. It contains a compilation of AKP leaders' statements, actions, and references to previous political party memberships -- with particular emphasis on anything related to the headscarf amendments -- that the prosecutor alleges demonstrate AKP's aim to erode Turkey's secular structures and lead the country toward sharia law. He includes vague language on possible resort to violence, or jihad. In Yalcinkaya's analysis, AKP's parliamentary majority makes it an instrument of power that must be reined in. Yalcinkaya outlines his duty as protector of the secular republic and emphasizes that secularism - not democracy - is the bedrock of the Turkish Republic. End summary.

Laying the Groundwork

¶3. (U) The indictment describes political parties as an indispensable element of democracy, but explains they are singled out for special legal treatment because of the effect they can have on society's basic principles. Yalcinkaya devotes considerable effort to demonstrating that this case complies with the standards of European and international conventions. According to the European Charter of Human Rights, he states, parties can be closed if they encourage racism, terrorism, xenophobia, violence or intolerance.

¶4. (U) Closing a political party constitutes interference with freedom of organization; the bar must be high, and the penalty proportionate to the crime. Party closure is a tool to be used only in the most serious situations. There must be evidence of a clear and present threat to democracy. In

that context, speeches and acts of the party leader and members both bind the party and paint a clear picture of the party's aims.

¶15. (U) The prosecutor refers to certain European totalitarian movements, which started as legal political parties and went on to destroy democratic systems. When national authorities spot such a trend, they have the obligation to prevent it before concrete anti-democratic steps can be taken.

¶16. (U) The basic legal authorities on which Yalcinkaya pins the case are Articles 68 and 69 of the Constitution and the Political Parties law (PPL). He refers as well to the Constitution's first four immutable articles, which include the principle of the secular state. According to the Constitution and the PPL, preconditions for a party closure include:

--When a party's bylaws and program violate Article 68, para 4 of the Constitution: "The statutes and programs of political parties shall not be in conflict with the indivisible integrity of the state with its territory and nation, human rights, national sovereignty, and the principles of the democratic and secular Republic."

--When the party in question becomes a center for activities in violation of Para 4 of Art 68 of the Constitution.

--When the party in question accepts financial assistance from foreign states, international institutions and persons and corporate bodies that are not Turkish citizens.

Options for dealing with the first two include depriving the

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party of state assistance in whole or in part; or closure.

What is Secularism

¶17. (U) The prosecutor stresses the need to understand secularism from the Turkish perspective. A democratic secular state makes no distinctions among its citizens based on their beliefs. Pursuant to Constitutional Court decisions, secularism dominates all basic principles of the Constitution, including democracy, and forms the bedrock of Turkey's constitutional order. According to Court decisions, religion should not be dominant in state affairs; unlimited freedom should be granted to the spiritual life of individuals; religions should be placed under constitutional guarantee; limitations should be introduced to protect the public order, security and interest and to prevent the exploitation and/or misuse of religion. Finally, the state (not the government), in its role as guarantor of public order and rights, has authority to control issues of religious rights and freedoms.

What is AKP

¶18. (SBU) Making direct reference to statements PM Erdogan has made comparing AKP to European Christian Democratic Parties, the indictment states, "Political parties that take political Islam as their basis have nothing in common with Christian Democratic Parties in Europe". Political Islam in Turkey is not limited to an individual and his God, but claims to regulate the state and society. The basic code of political Islam is sharia. Political Islam and its constitution, sharia, are not democratic, but totalitarian. To evade the watchful eye of the institutions of democracy, AKP, the indictment charges, uses "takiyye" (deceit) -- hiding its true intentions to accomplish its goal. This, method, too, finds its source in sharia. Any arrangement that emphasizes religious requirements cannot be democratic; only a secular state can be democratic. Ataturk alone abolished sharia in a Muslim society.

AKP's Alleged Crimes

¶9. (SBU) For a political party to be a center of anti-secular acts, these acts must be committed "intensively" by party members, and implicitly or openly adopted by party decision-making boards or organs. The dates on which alleged acts were committed are not important. "No matter how long ago the acts were committed," the indictment may cite them to show the party as a "center" for anti-secular acts. This permits Abdullah Gul's statements and acts as a founding member -- as PM, FM, deputy PM -- to be attributed to the party.

¶10. (U) As evidence of AKP's intent, the prosecutor focuses on:

--Presumed continuity with (banned) AKP predecessor parties, based on continuity of party founders and members, including PM Erdogan, President Gul and many others.

--The presumption that AKP's intent is gradually to transform Turkey into an Islamic state, with "moderate Islamic republic" as a mid-point and sharia as end-point; numerous individuals' statements are used allegedly to prove this charge (this is where the reference to Colin Powell fits in, who once termed Turkey a "moderate Islamic republic", as well as Erdogan's co-chairmanship of BMENA, which Yalcinkaya describes as a "US project aimed at converting involved countries into moderate Islamic regimes").

--Emphasis on the fact that AKP is not a marginal party, but rather one that wields power which thus needs to be closely watched/examined.

¶11. (SBU) The headscarf reforms are cited as evidence of AKP's intentions to turn the state toward sharia:

--The Education Ministry and YOK are tools used to fulfill AKP's vision. Those who want to transform a society knows

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they must start with education. A number of examples are offered of women who wear headscarves, who challenged bans in court and were rebuffed by courts in Europe, generally with the argument that the complainant knew the rules under which she was playing when she applied to a certain school.

--Statements by officials -- the PM, Education Minister Celik, Higher Education Council (YOK) president Ozcan, AKP Vice chair Dengir Mir Firat, former PM adviser Cuneyt Zapsu, and others -- are cited as exploiting religion and creating a chaotic environment at universities.

--The prosecutor juxtaposes AKP claims that the headscarf is a human rights cause with PM Erdogan's statement that it had become a political symbol; turning a religious element into a political symbol constitutes exploiting religion. (Erdogan, in Madrid in January, said, "University-age women wearing headscarves have been under pressure as they have been accused of using their headscarves as a 'political symbol.' Even if it is worn as a political symbol, can you consider wearing it ... a crime? Can you introduce a ban on symbols?")

--Statements by several AKPers that liberalizing use of the headscarf at universities was the first step; their goal was to liberalize wearing the headscarf in the public sector as well.

What Yalcinkaya Thinks

¶12. (SBU) Yalcinkaya expounds on his own views. In Turkey, "it is a social fact that many women could not take advantage of higher education because of poverty and because they had to abide by the religious bigotry-led patriarchal order." The headscarf, he states, was AKP's tool to negate women's liberation struggle and the secular merits of the Republic. Liberating the headscarf at universities is a dangerous

process that would spread to the public sector; those who do not wear it will be forced to cover. AKPers have turned people against the state and dragged society into secular/anti-secular polarization. He also cites his press release of 1/17/2008 in which he warned that liberalizing use of the headscarf would violate the security and unitary structure of the state. Amendments to the Constitution and the YOK law would be in violation of the secularism principle of the Constitution, enshrined in the first four immutable articles of the Constitution.

Conclusion

¶13. (U) The indictment concludes that:

--AKP aims to bring about a societal model based on religion. From the PM down, AKPers' persistent actions demonstrated that AKP has become a center of anti-secular activities, a valid ground for party closure.

--AKP employed political Islamists in the state.

--AKP exploited religious days and holidays at all levels of the party.

--AKP attempted to amend the immutable articles of the Constitution by using its majority in parliament, ignoring the principles of separation of powers and the supremacy of law.

--Despite existing court decisions, AKP members and administrators introduced Constitutional arrangements to liberalize clothing at institutions of higher learning. Beliefs or clothing, taken as criteria, translate into discrimination within the state and lead to divisions.

--AKP thus demonstrated its intention to change the basic principles of the Republic of Turkey, transform the secular Republic, divide people into those who are pious and who are not, re-shape the secular judicial structure and open to discussion the future of the regime and the Republic.

--If the immutable secularism principle of the Constitution

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has been eroded, the Chief Prosecutor must use his authority to protect the regime and the principles of the Republic. As a result, AKP should be closed as a center of anti-secular activities, based on Articles 68/4 and 69/6 of the Constitution.

--The Kemalist state was born at the end of a struggle against an Islamic state headed by a Caliphate.

--If AKP could not achieve the regime it wanted through democratic means, it might use Jihad - violence - as an alternative means to achieve its aims.

--AKP's actions would damage the peace and democratic regime of the country and could only be prevented by a closure decision.

--He demanded a 5-year political ban on 71 AKPers who, thought their actions and rhetoric, made the AKP a center of activities against secularism.

Comment

¶14. (C) This is a typical Turkish "kitchen sink" indictment - a collection of statements and incidents that Yalcinkaya maintains had reached critical mass. This "throw everything in" approach risks overreaching and damaging his case and credibility. It is, though, an accurate reflection of the prism through which staunch Kemalists view the world: For them, AKP's majority works against it, not for it, because it creates a dangerous center of power that must be controlled.

That is more important than the voice of the people. Attempts at change are aimed against the state, they fear. Draft laws and disparate statements constitute intent and prima facie evidence of a crime. AKP's efforts constitute an attempt to turn back the clock to the Caliphate that existed before Ataturk's revolution. And the headscarf amendments crystallized AKP's "deceitful game": step by step, they intend to move toward a "moderate Islamic republic" and thence to theocracy. Much of this may seem exaggerated - but to the chief prosecutor and those like-minded, it is very real. They see it as their sworn duty to protect the state against threats, and they view AKP as the ultimate threat from within.

¶15. (C) The rapporteur of the Constitutional Court submitted his report on March 27 on the completeness of the indictment.

Based on that, the Court will decide on March 31 whether to proceed with the closure case. Some contacts have told us this indictment is meatier than those that caused predecessor parties Refah and Fazilet to be closed. If it is to proceed, that is appropriate, given the place AKP occupies today in Turkey.

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